

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

11 CV 0032 *Sc*

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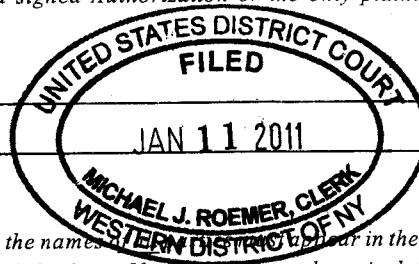
1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. Mr. LEROY CARVER

2. _____

-VS-



B. Full Name(s) of Defendant(s) NOTE: *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. C.O. J. Patterson

4. C.O. P. Farrell

2. Can't make out writing, C.P. C.O.

5. C.O. Ms. T. Watson

3. C.O. J. Barrett

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Mr. LEROY CARVER, #10-B-1328

Present Place of Confinement & Address: Wende Correctional Facility
Wende Rd, P.O. Box 1187 Alden, New York 14004-1187

Name and Prisoner Number of Plaintiff: Mr. LEROY CARVER, #10-B-1328

Present Place of Confinement & Address: Wende Correctional Facility
Wende Rd, P.O. Box 1187 Alden, New York 14004-1187

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: C.O. J. Patterson

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Wende Correctional Facility Wende Rd, P.O. Box 1187 Alden, New York 14004-1187

Name of Defendant: C.O. P. Farrell

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Wende Correctional Facility Wende Rd, P.O. Box 1187 Alden, New York 14004-1187

Name of Defendant: C.O. J. Barrett

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Wende Correctional Facility Wende Rd, P.O. Box 1187 Alden, New York 14004-1187, C.O. T. Watson, and C.O. C. P.

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No X

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:
Plaintiff(s): _____
Defendant(s): _____
2. Court (if federal court, name the district; if state court, name the county): _____
3. Docket or Index Number: _____
4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: 10-4-10
6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☒

If not, give the approximate date it was resolved. 12-27-10

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim:

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|--------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | ✓ <u>Excessive Force</u> | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) 9-28-10

defendant (give the **name and position held** of **each defendant** involved in this incident) C.O. J. Patterson
C.O. P. Farrell, "C.O. C.P. Can't make out his name," J. Barrett C.O.,
C.O. T. Watson

did the following to me (briefly state what each defendant named above did): All the c.o.'s beat me,
as I was going up the stairs C.O. Patterson hit me in my stomach
with his baton. The escort C.O. who was behind me beat me
and the c.o. that was in the D-block which I don't know how
many. I was punched in the face, head, and back as I went
down to the floor, I was kicked in the head, back, in my left side
and poked in my left side with the baton. While on the floor some-
one grab my right foot and tried to break it, I was pushed to the floor 4 times.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Acting "under Color of
State law."

The relief I am seeking for this claim is (briefly state the relief sought): "Compensatory Damage," Punitive Damage"
For the suffering and pain that I'm still having, my left side is
still hurting in my ribs. My right foot and ankle is still hurting me.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? X Yes No If yes, what was the result? Grievance
denied.

Did you appeal that decision? X Yes No If yes, what was the result? That I guilty and
has been reviewed and Affirmed.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I exhaust the
administrative remedies that I know of.

A. SECOND CLAIM: On (date of the incident) on 9-28-10 When I wrote grievance
 defendant (give the **name and position held** of **each defendant** involved in this incident) they knew about
the Incident due to the report. And yes I did give the name of
the c.o.

did the following to me (briefly state what each defendant named above did): All the c.o.'s beat me as I was going up the stairs C.O. Patterson hit me in my stomach with his baton. The escort C.O. who was behind me beat me and the c.o. that was in the D-block which I don't know how many. I was punched in the face, head, and back as I went down to the floor, I was kicked in the head, back, in my left side and poked in my left side with the baton. While I was on the some-one grab my right foot and tried to break it, I was pushed to the floor 4 times.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Injunctive Relief, Compensatory Damages, Declaratory Judgement, Money Damages

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory Damages, For the pain and suffering that I'm still having following the injury during which I continue to suffer as a result of the injury.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? X Yes _____ No If yes, what was the result? Grievance denied.

Did you appeal that decision? X Yes _____ No If yes, what was the result? That I was guilty and has been reviewed and Affirmed.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I exhaust the administrative remedies that I know of.

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

"Punitive" Damage Summarize the relief requested by you in each statement of claim above.

"Compensatory Damages," My eighth amendment violations due to prison officials failed to protect prisoners from excessive force. C.O. Patterson acted "maliciously and sadistically" for the purpose of causing harm.

Do you want a jury trial? Yes _____ No _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1-10-11
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Mr. Leroy Carter

Signature(s) of Plaintiff(s)